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May 26, 1987 - -

Gene Wong
EPA Region 5
230 S. Dearborn St.
Chicago, IL 60604

Dear Mr. Wong:

A story which may be of interest to you appears on page one in the current issue of Superfund. In case you're not a subscriber, we're sending you this complimentary copy of the newsletter. Please notify us if there are any errors in fact or tone. Thank you very much for your assistance.

Sincerely,

Bowman Cox
Editor, Superfund

SUPERFUND

May 25, 1987

Permitting threatens to bog Superfund despite SARA

EPA is acceding to permitting requirements at some Superfund sites even though the Superfund amendments allow exemptions from such permits so cleanups won't be delayed.

Contractors and EPA staff indicate the lack of a clear policy on permit exemptions makes planning difficult and leaves potential for cities or states to use permit procedures to slow or block action at Superfund sites.

Sect. 121(e) of the Superfund Amendments and Reauthorization Act (SARA) declares no permits shall be required for any on-site removal or remedial actions that comply with SARA-mandated cleanup standards.

EPA headquarters interprets this to mean Superfund cleanups must meet the substantive requirements of the permits — but not the administrative requirements. The rationale is to save time by avoiding filling out forms and enduring lengthy public comment periods that can delay cleanups by a year or two.

The provision is critical according to a Region 5 official, who explained that if permits were required, "the program would absolutely fall on its face."

But the regions do not consistently interpret the provision, and at least one state and an EPA program have

required permits despite it. The upshot for Superfund contractors is permitting requirements will vary by region, by state and by site.

EPA headquarters officials say the bottom line is EPA's Superfund staff won't require any permits — but if pressed they will allow others to require them.

To meet the substantive permit requirements, EPA normally consults state and federal permitting authorities at the remedial design stage. In the case of incineration, the group sets standards the incinerator must meet, then all observe the results of a trial burn. But the process can break down if one of the players doesn't go along.

For example, EPA officials responsible for administering the Toxic Substances Control Act (TSCA), which regulates disposal of polychlorinated biphenyls (PCBs), are wrangling with the Superfund program over whether mobile incinerators need TSCA permits if they are to be used to clean up PCBs at Superfund sites.

TSCA officials are under pressure to permit incinerators because there is a shortage of incinerator capacity permitted for PCB destruction. But the TSCA permitting process can

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EPA seeks to halt Skinner site's burial

Because the Skinner Landfill's owners buried an area requiring further remedial investigation under 5' to 20' of construction debris, EPA Region 5 is adjusting its study strategy and has stopped work to take legal action.

To do the first phase of the study, EPA had signed an access agreement with the owners of the site in the southwestern Ohio town of West Chester. Now the agency wants a stronger administrative order granting access and ensuring the owners don't interfere with the agency's activities.

EPA hopes to compel the owners to stop landfilling over a buried waste lagoon that has become the focus of EPA's study. Since the agency's last site visit in October, the owners have piled 5' to 10' of concrete and metal debris

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Biodegradation pilot begins at French Ltd.

After a month of operation, ERT Inc. is pleased with the progress of a biodegradation pilot at the French Ltd. Superfund site in Crosby, Texas.

ERT is operating the pilot for the French Ltd. task force, which stands to gain if the pilot impresses EPA.

The agency's region 6 officials have decided, based on a remedial investigation and feasibility study completed in March, that they prefer the incineration option — which is estimated to cost \$120 million.

ERT believes its biodegradation process would cost 40% of that — or \$48 million. EPA is willing to consider issuing a record of decision in favor of biodegradation, but only if the pilot works. ERT will assess the pilot in October.

The site is a 7.5-acre abandoned waste pit holding some 14 million gallons of sludges containing phenols, polychlorinated biphenyls (PCBs), oil, grease, acids, solvents and heavy metals. Located on the floodplain of the San Jacinto River, the pit has been flooded several times, and was the subject of immediate removal actions in 1980, 1982 and 1983.

On the bottom of the waste pit is organic sludge ranging from several inches to 10'-12' in depth. Above the sludge is 15' to 20' of water. For the pilot, ERT used steel sheet pile

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take more than a year, and could substantially delay Superfund work.

TSCA is preparing a demonstration permit that would allow an incinerator to burn PCBs in a test at the Florida Steel national priority list (NPL) site in Florida. O.H. Materials will operate the incinerator, which is not yet onsite.

While many states have gone along with the substantive requirements approach, the state of Michigan is not one of them. The Michigan Dept. of Natural Resources requires state air emissions permits for operations at Superfund sites.

Michigan is requiring Shirco Infrared Systems to obtain a state air emissions permit before performing a three-day test of its incinerator at the Rose Township Superfund site. State officials don't expect the permitting process to delay

the test. But if a record of decision expected this fall for Rose Township favors incineration, the full-scale unit would have to get permitted too.

Michigan also believes a state air permit is required for cleanup at the Verona Well Field site, where EPA has chosen an enhanced volatilization process. EPA is spending state Superfund money at the site under a contract signed with Michigan last year, when the federal Superfund program was short on funds. Michigan stands by a requirement in the contract for a state air quality permit, even though EPA has asserted SARA Sect. 121(e) negates that requirement. The result: EPA has put the job out for bid with two sets of performance standards — EPA's and the state's.

In another development, the state of New York is requiring an environmental impact statement before EPA can use a plasma arc process at the Love Canal site.

Congress urges EPA to hurry up rules for citizen grants

Congressmen, spurred by constituents anxious to get their Superfund technical assistance grants, are pressing EPA to promulgate the regulations needed to get the grants out.

EPA won't be ready to accept grant proposals from citizens groups until it produces an interim final rule this winter — which will be too late for some groups. That's because a number of key records of decisions are slated for this fall, before the grants could provide citizens with a means to take part in the technical debate.

In a letter to EPA Administrator Lee Thomas last week, Sen. Frank Lautenberg, D-N.J., urged EPA to issue an interim rule to allow the grant program to begin while the regulations are fine-tuned. He also requested a status report by June 1 explaining why the regulations can't be ready by June 17.

According to EPA staff, issuing an interim final rule at

this stage would only save two months. And typically it's harder to change an interim final rule based on public comments than to change an advanced notice of proposed rulemaking, which EPA is developing for the grant program.

EPA is grappling with how to streamline federal grant and procurement procedures for the program, since it's for grants of no larger than \$50,000 that are given to non-profit groups. For example, legal staff are investigating whether recipients will have to file quarterly reports on minority hiring practices.

EPA also is seeking ways to ensure the money doesn't end up supporting litigation against the agency. EPA is developing ways to resolve issues in SARA Sect. 117(e), which requires the grants, such as when to waive the \$50,000 ceiling and the 20%-match required from recipients.

EPA considers formal role for third party mediators

EPA is considering offering Clean Sites Inc. and other third parties a formal role in resolving Superfund settlements.

The agency's Office of Enforcement and Compliance

Monitoring is developing guidance on using third parties to mediate settlements formally with potentially responsible parties, which EPA calls alternative dispute resolution proceedings. In the past, Clean Sites and other third-party

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mediators were restricted to informal discussions that precede actual settlement talks.

EPA plans to try the dispute resolution process in a few pilots before completing the guidance and setting procedures for getting third party mediators.

EPA has conformed its policy for indemnifying Clean Sites to Sect. 119 of the Superfund Amendments and Reauthorization Act (SARA). Effective Oct. 17, 1986, Clean Sites may still request site-by-site indemnification, but only if it has first tried its hardest to get private insurance or PRP indemnification.

EPA won't indemnify Clean Sites for certification or project management, or for acting as technical advocate or advisor. And if EPA declines a request, there is no chance for administrative appeal. If approved, EPA would follow an April 29, 1985, site-specific indemnification agreement with Clean Sites.

Besides mediating settlements, Clean Sites also can oversee PRP remedial investigations and feasibility studies (RI/FSs) and manage RI/FS, remedial design and construction.

EPA contact is Bob Mason 202-382-4015.

Regulatory briefs

► New Jersey reorganizes cleanup program

New Jersey has reorganized its hazardous waste program in a move to manage cleanups better at the hundreds of sites it has identified as requiring major work.

The plan, put in place by Gov. Thomas Kean by executive order, is the latest initiative to speed a program that many have criticized for its slow pace. Authorities have deemed clean only one of the state's 100 Superfund sites.

The state expects to spend \$1.6 billion in the next five years to clean up 229 hazardous waste sites determined by the Dept. of Environmental Protection (DEP) to require significant cleanup actions.

The reorganization plan, effective May 9, creates two new divisions within the DEP led by a new assistant commissioner with sole responsibility over the cleanup program. The plan is in line with legislation pushed by democrats in the state Senate who argued the urgency and sensitivity of the cleanup program demanded higher public visibility.

The reorganization consolidates several programs under a new Division of Hazardous Waste Management. The division's main responsibility is to negotiate and oversee cleanups by the private sector and to regulate industry that handles and disposes of hazardous wastes.

In issuing the reorganization order, Kean said the regulatory advantages inherent in the consolidation should help effect more responsible-party cleanups under state supervision. The plan is viewed as critical to the department's ambitious goal of achieving \$500 million in commitments from private parties over the next five years for cleanup work.

By DEP's projections, one-third of the cleanup costs will be financed by responsible parties, one-third by state funds and the remainder with federal Superfund money.

The state's publicly funded program will be administered by a new, upgraded Division of Hazardous Site Mitigation.

► EPA would list federal RCRA facilities

EPA May 13 proposed adding to the National Priorities List (NPL) all federally owned facilities that are subject to corrective action under the Resource Conservation and Recovery Act (RCRA) (52 FR 17991).

The federal sites would be added for a different reason than private sites. Private sites have to be on the NPL to

get cleaned up with money from the \$8.5 billion Hazardous Substances Superfund, at least according to Sect. 300.68(a) of the National Contingency Plan.

EPA is barred from using the fund to clean up federal facilities, and so would add them to the list simply to advise the public that the sites need cleaning up. The agency also hopes the exercise will help other agencies set cleanup priorities.

EPA's first policy for privately owned RCRA facilities was not to add them to the NPL — and instead force cleanup under RCRA subtitle C corrective action. But on June 10, 1986, the agency announced a policy to add to the list those RCRA facilities owned by bankrupt companies or which have lost RCRA interim status and whose owners show no signs of interest in taking corrective action.

EPA said bankruptcy proceedings don't apply to federal facilities and it's unlikely that the facilities would not comply with federal laws, so EPA's policy for federal facilities should be different: To ensure federal facilities get equal treatment under Sect. 120 of SARA, EPA believes it should not consider their RCRA status at all.

Comments are due June 12. Contact is Scott Parrish at 202-382-5632.

► EPA proposes RCRA liquid waste rule

In response to a host of comments, EPA has decided to account for differences between liquid and solid hazardous wastes in the RCRA subtitle C hazardous waste identification procedure.

EPA acknowledged in a supplemental notice of proposed rulemaking (52 FR 18583) comments that its mismanagement scenario of co-disposal with municipal wastes makes little sense for liquid wastes, since they generally go to surface impoundments rather than landfills.

The agency proposed a separate scenario for liquid wastes based on impoundment in an unlined lagoon. This would mean each toxin would be regulated differently, depending on whether it's disposed of as a liquid or solid. For more information contact Doreen Sterling at 202-475-8551.

► EPA to propose leak detection requirement

EPA will propose in the Federal Register next week a new requirement for leak detection systems for all new landfills, surface impoundments, waste piles and land treatment units. In the past, EPA has required ground water leak detection systems for such facilities under RCRA. The

proposal requires double liners equipped with leachate collection, detection and removal systems above and between the liners.

► **RI/FS workgroup carries torch**

EPA recognizes it still has a lot of work to do in deciding how to select Superfund remedies in the wake of the Superfund Amendments and Reauthorization Act (SARA) — even though its remedy selection workgroup has disbanded.

The workgroup solved as many issues as it could to provide a remedy selection process for the revised National Contingency Plan being developed by the agency. A more detailed remedy selection process is being developed by a remedial investigation and feasibility study (RI/FS) work group that aims to close in September.

► **EPA publishes SCAP reports**

EPA has published several types of Superfund Accomplishment Plan (SCAP) reports, which are available for a fee:

The 1,200-page "NPL site summary report" describes each National Priority List site in tabular format, including the dates each step is reached or is projected to be reached in the pre- to post-remedial cleanup process, and the status of any funding obligations for those steps. Cost is \$50/region; \$220 for all regions.

The 80-page "Non-NPL site summary report" provides similar information for actions at non-NPL sites such as removal actions or remedial investigations and feasibility

studies (RI/FSs). Cost is \$4/region; \$16 for all regions.

The 40-page "FY 1987 SCAP statistical target summary report" describes for each quarter the target number of each pre-remedial and remedial action EPA intends to perform, and shows how many actually got done and what percentage of the target was achieved. Cost is \$2/region and \$10 for all regions. The same report is available at the same price for fiscal year 1988.

The 10-page "FY 1987 SCAP statistical measure summary report" shows by quarter the number of each type of enforcement action begun, such as PRP searches, release notifications and judicial referrals. Cost is \$0.50/region and \$2 for all regions. The same report can be had at the same price for FY 1988.

The 80-page "FY 1987 SCAP/SPMS candidate target-site summary report" lists site activities that are candidates for funding obligations that would achieve quarterly spending goals. It lists the sites, the planned dates for each activity and the planned funding obligations. Cost is \$4/region or \$16 for all regions. The same report is available for FY 1988 at a cost of \$3/region or \$12 for all regions.

The 40-page "FY 1987 remedial activity funding report" shows sites that have been funded for RI/FSs, remedial designs or remedial actions, as well as the amount of funds targeted in each quarter for each activity. Cost is \$2/region or \$8 for all regions.

To order, write to: Jim Woolford, Superfund SCAP coordinator, Budget and forecasting section (WH 548D), U.S. EPA, 401 M St. SW, Washington, D.C. 20460. Checks should be payable to EPA.

ERT starts French pilot...(From page 1)

to wall off a one-third acre section at one end of the lagoon. The company ran pipes containing holes in their walls from an air compressor across the bottom of the pilot area. Air pumped into the pipes exits through the holes to agitate and aerate the sludge.

ERT also hung a centrifugal pump from a boom that can swing across the pilot area. The pump mixes the fluids to keep the sludge in fluid suspension. ERT adds nitrogen and phosphorous fertilizers and adjusts pH with acids or lime to create the right conditions for micro-organisms

already present in the lagoon to multiply and break down the organic wastes.

The company has achieved the proper conditions and a jump in oxygen demand indicates micro-organisms are indeed proliferating. But ERT isn't tracking contaminant levels to see if they decline. Instead it will wait until it completes operations in October to test for residual contamination.

Bench-scale laboratory tests done last summer indicate ERT's mechanical approach to biodegradation can break down the site's organic compounds — including PCBs.

EPA boosting removal program with prime contractors

EPA is adding a couple dozen more prime contractors to its removal program in an effort to enhance competition, give regional EPA officials more authority, bring smaller firms into the Superfund program and bolster innovative technology.

In the past, four Emergency Response Cleanup Services (ERCS) contractors have done the bulk of EPA's removal work. Each is required to respond within two to 24 hours to hazardous-substance emergencies in one of four ERCS zones.

EPA is halving zone four, which stretches from Louisiana to Alaska, in the hope of spurring competition among contractors that would bring down their prices. One half will cover EPA regions six and seven, while the other

will consist of regions eight, nine and 10. The agency is preparing requests for proposals for the two new zones.

EPA also is offering 18 "mini-ERCS" contracts. The mini-ERCS contractors will only do non-emergency removals requiring response times of at least one to three days and will directly serve individual regions.

EPA designed the mini-ERCS contracts to attract small firms, to stimulate competition and to give regional officials more control over the program. The award-fee contracts require the regions to give each mini-ERCS contractor a minimal amount of work — to get more work the contractors have to prove themselves worthy. Also the mini-ERCS contracts are generally for one year with two or three optional one-year extensions, which allows EPA to weed out any

contractors that don't do a good job.

The agency has awarded its first mini-ERCS contract to Maecorp Inc. of Homewood, Ill., which qualified as a minority or disadvantaged firm. The company is working on 13 sites in Region 5.

EPA has advertised most of the 17 remaining mini-ERCS contracts, including three in Region 3 and some in Region 4. Region 2 mini-ERCS contracts will soon be announced. The agency has advertised for four dioxin-site contracts for Region 7, but hasn't awarded any yet.

The agency will offer five new site-specific contracts for alternative technologies — two this fiscal year and three in the next. EPA officials are waiting for the regions to nominate sites for the program. The agency is preparing guidance to its regions on contracting for alternative technologies.

EPA has signed cooperative agreements with the states of New York and Colorado to handle removal programs — and expects to sign them with other states over the next year.

Cleanup standards for removal actions won't necessarily be as tough as for remedial cleanup under SARA. EPA's position is it doesn't have to meet state and federal applicable or relevant and appropriate requirements (ARARs) for removals — but as a matter of policy it will meet those it knows about without doing a lot of research.

EPA expects that perhaps the most significant ARAR — the land disposal ban imposed by the Resource Conservation and Recovery Act — will double the \$250,000 average removal cost.

When EPA plans non-urgent removals, the agency will comply with the National Environmental Policy Act (NEPA) by performing a condensed version of a remedial investigation and feasibility study (RI/FS) called an engineering evaluation and cost analysis. The procedure calls for a public comment period. EPA also plans to propose in the *Federal Register* generic exclusions for removal actions that couldn't harm the environment — such as fencing off a site.

Council to represent interests of Superfund contractors

The National Solid Wastes Management Assn. has established a new organization to represent the interests of Superfund contractors.

The Remedial, Environmental and Emergency Response Council grew out of a meeting in February of the association and six companies who were, in the words of an association official, "looking for a home."

Since then another eight Superfund contractors have joined the group, and a major recruiting effort is under way. Next month the council plans to hold a recruiting seminar that mainly will consist of talks by EPA and other officials on issues of interest to Superfund contractors.

The council's goals are to:

- develop standards for an industry that faces widely varying cleanup criteria and liability exposure depending on the site location and cleanup program involved;
- provide members timely information on EPA

regulations and proceedings, as well as other national, state and local events affecting the contracting industry;

- speak for the industry before EPA and Congress;
- bring industry members together to solve common problems;
- promote professionalism; and
- develop a positive image and public recognition for the industry.

As the council establishes itself, it will develop subcommittees to focus on issues of concern such as contractor liability. While consultants are invited to join the council, only companies actually involved in on-site remedial work can become voting members.

For more information or to join contact the association's director, Suellen Pirages, at NSWMA, 1730 Rhode Island Ave. N.W., Washington, D.C. 20036; telephone 202-659-4613.

Response briefs

► EPA considers Accra-Pac options

EPA Region 5 has developed four options for treating or disposing of contaminated soil at the former Accra-Pac site in Elkhart, Ind. — low temperature thermal stripping, incineration, vapor extraction into a carbon filtration unit or removal to a permitted landfill.

The 3.5-acre Accra-Pac facility was an aerosol packing plant until it exploded in January, 1976. Warner Baker bought the site in 1977 to redevelop it.

Well samples taken in May 1985 showed nearby drinking water wells had been contaminated by trichloroethylene. Affected residences were provided with municipal water. Further sampling in January, 1987, showed that of 11 compounds in 13 underground storage tanks at the Accra-Pac site, four had reached the wells, along with two aerosol propellants. In 1986 EPA ordered

the estate of Warner Baker to clean up the site.

The Baker estate cleaned out the storage tanks, sending away 33,500 gallons of liquid for disposal. The estate excavated the tanks and stored them for decontamination and scrapping, and backfilled the holes with enough soil to stem volatilization from the contaminated soil.

EPA contact: Arthur Gasior, 312-886-6128.

► EPA nears decision on Saltville remedy

EPA Region 3 and the state of Virginia are leaning toward upgrading stormwater control and detoxifying an onsite pond to remedy the Saltville Superfund site in Smyth County, Va.

That option is one of several developed in a remedial investigation and feasibility study (RI/FS) of the site, where from 1950 to 1970 a chlor-alkali plant contaminated plant

grounds and the North Fork of the Holston River with mercury.

Because mercury can damage the central nervous system and cause reproductive disorders, the states of Virginia and Tennessee have banned the eating of fish caught in the river.

Under the preferred option, EPA would control storm water by building ditches, berms and swales. Other options are capping, diverting surface water, removal and excavation, or sludge and ground water treatment. Also, EPA considered building dams, floodwalls or levees to contain mercury that reached the river.

Comments are due by June 11. Contact is Ray Germann at 215-597-9871.

► **Elyria opens door to Republic site**

The city of Elyria, in response to the first access order issued under Sect. 104 of the Superfund Amendments and Reauthorization Act (SARA), on May 8 granted EPA access to the Republic Steel Superfund site.

On May 18 EPA will start an eight-month first-phase investigation of the site. Depending on the results it may do more work later.

► **EPA completes phase one RI at Schmalz**

EPA Region 5 has completed phase one of a remedial investigation (RI) of the Schmalz Dump Superfund site in Harrison, Wis., and plans to begin cleanup of polychlorinated biphenyls (PCBs) at the site in July.

The Schmalz site, which occupies one-half acre of

wetlands on the north shore of Lake Winnebago, was used beginning in 1978 by the Allis-Chalmers Corp. for disposal of materials from a demolished building. In 1979, the U.S. Army Corps of Engineers discovered PCBs in the building debris, and the dumping was stopped.

The site also had been used for decades for the disposal of industrial wastes, including lead and other heavy metals.

EPA fenced off the site in June 1985, and installed monitoring wells to check for ground water contamination during phase one of the RI. During the course of the investigation, which was intended to determine the extent of PCB contamination, EPA discovered chromium contamination in water samples from the monitoring wells. Phase two of the RI will determine the extent of chromium contamination.

EPA expects to seek bids in the next few weeks for remedial cleanup. The contract will be awarded on a fixed price/closed bid basis. The site has been divided into operable units, with interim remedies to be applied to each unit as unit investigations are completed, according to an EPA Region 5 official.

PCB cleanup is expected to take about four months and cost \$3 million. The second phase of the RI should be completed in three weeks, and a decision on remedial cleanup of the chromium contamination is expected sometime this fall.

EPA continues to negotiate with Allis-Chalmers to participate in the cleanup. The company so far has refused.

EPA contact is Margaret Guerriero at 312-886-0399.

Contract briefs

► **EPA seeks N.J., N.Y. ERCS contractor**

EPA will issue a request for proposals June 26 for a regional Emergency Response Cleanup Services (mini-ERCS) contract for the states of New Jersey and New York. The contractor must be able to respond to emergencies within two days. The contract is for at least \$500,000 and one year, with two one-year extensions at EPA's option. Contact for RFP WA 87 H275 is Calvin McWhirter, 202-382-3185.

► **Marathon Battery cleanup sought**

The Army Corps of Engineers is seeking a contractor to clean up the Marathon Battery Co. site in Cold Spring, N.Y. The job is mainly to dredge cadmium-contaminated sediments from a marsh, thicken them, perform chemical fixation and transport the fixated sediments to a local landfill. Estimated cost is \$10 million to \$50 million. Contacts are Donald Hooker (816-374-5221) and Charlene Points (816-374-5542).

► **CH2M Hill wants subcontractors**

CH2M Hill is requesting statements of qualifications from companies that could potentially subcontract technical assistance work in EPA Region 9. Contact the subcontractors administrator, CH2M Hill, zone program management office, 625 Herndon Parkway, Herndon, Va. 22070.

► **Tinker AFB study needed**

The Army Corps of Engineers is seeking a contractor to do a feasibility study of remedial treatment for contaminated groundwater at Tinker Air Force Base in Oklahoma. Contact the military branch chief at 918-581-7251.

► **IT gets Army's first ammo cleanup**

The first contract awarded for Superfund cleanup of U.S. Army ammunition facilities went to International Technology Corp.

The Army awarded IT Corp. a contract for as much as \$20 million to incinerate contaminated soils at the Cornhusker Army ammunition plant near Grand Island, Neb., and the Louisiana Army ammunition plant near Shreveport.

IT will immediately begin operations at the Cornhusker facility, where it expects to burn 142,000 tons of soil contaminated with trinitrotoluene (TNT) and an experimental explosive called RDX.

Disposal of wastes at the contractor-operated facility has contaminated more than 500 private wells.

IT said its incinerator is the largest transportable incinerator available, and can be as cheap as off-site treatment and disposal.

IT contact is John T. Schofield at 213-378-9933.

► **E&E gets \$9.5 mm Air Force contract**

Ecology and Environment Inc. has signed a \$9.5 million

contract with the Air Force to study hydrogeology, take samples, do laboratory tests and perform risk assessments on hazardous, radioactive and toxic pollutants at Air Force installations. The contract is a four-year basic ordering agreement through December 1990.

► **Maecorp gets Region V contract**

EPA has awarded Maecorp Inc. of Homewood, Ill., a contract for Region V Emergency Response Cleanup Services for hazardous substances.

The contract is for one year, with two one-year options. Dollar value is \$40,000 minimum, \$14 million maximum.

► **EPA wants brochures**

EPA invites those with cleanup technologies to provide information on them for the edification of personnel involved in Superfund-site cleanup.

To respond to the request, send brochures, slides, publications and other technical data to Paul des Rosiers, of EPA's Office of Environmental Engineering and

Technology Demonstration (RD-681), 401 M St. SW, Washington DC 20460.

Rosiers will place the information in a reference file on hazardous waste treatment technologies.

► **CE to restore N.J. chemical plant**

Millmaster Onyx Group has contracted a Combustion Engineering Inc. subsidiary to decontaminate, demolish and restore a five-acre chemical plant site in New Jersey.

The inactive cosmetic and pharmaceutical feedstock plant, located near New York City, contains 160 aboveground and underground tanks and 1,500 drums.

C-E Environmental Systems & Services Inc. of Bloomfield, N.J., will perform management, design and construction, as well as RCRA/ECRA closure services. The job includes doing comprehensive sampling and analysis of the soil and ground water.

► **Chemical Waste to clean up Texas pit**

EPA has contracted Chemical Waste Management for a \$4 million cleanup of the Highlands Acid Pit Superfund site in Texas.

EPA seeks to halt re-burial...(From page 1)

over the buried lagoon. While EPA insists it is not crying foul play, an agency source noted that another 10' to 20' of debris could make it unfeasible to remove contaminated soil from the re-buried lagoon.

The owners say they landfilled over the toxic hot-spot because they had run out of room at an active landfill 200' to the north.

In adjusting its phase 2 investigation, EPA has switched from drilling wells for subsurface soil samples to digging a trench.

Among the site's potentially responsible parties are some deep-pocket companies, including Maxwell Co., Shell Oil Co., Ford Motor Co. and Dow Chemical Co.

EPA contact is Gene Wong at 312-353-6341.

Court briefs

► **Chehalis bankruptcy petition dismissed**

A bankruptcy court earlier this month dismissed a petition for chapter 7 bankruptcy by the owner and lessee of a site undergoing hazardous-waste cleanup.

Chehalis Realty leases the property in Chehalis, Wash., to American Crossarm and Conduit Co., which operated a wood treating business at the site involving treatment, storage and disposal of hazardous waste.

A November 1986 flood led to an emergency response action at the site by EPA and the Washington Dept. of Ecology. The federal and state agencies still are stabilizing the site and expect to spend "substantial sums" to complete cleanup and removal.

The realtor and lessee filed for bankruptcy on Feb. 13 with the U.S. Bankruptcy Court for the Western District of Washington. James McCoy, an interim trustee appointed on March 2, gave notice that the parties proposed to abandon the property. After the state Ecology Dept. objected, McCoy resigned, rejecting his appointment because of the site's environmental problems.

In dismissing the bankruptcy petitions, the court

adopted the reasoning of *In re Charles George Land Reclamation Trust*, in which the case was characterized as a matter of environmental nuisance rather than a bankruptcy. In the Charles George case, the court found dismissal would, by eliminating the automatic stay, allow federal and state environmental authorities to assert their full panoply of powers.

► **Parties agree to Butterworth RI/FS**

A U.S. district court filed a consent decree late last month in which several parties agreed to do a remedial investigation and feasibility study (RI/FS) of the Butterworth landfill, a municipal dump in Grand Rapids, Mich.

EPA had lodged the consent decree on Feb. 25 with the U.S. District Court for the Western District of Michigan, Southern Division, when it filed *U.S. v. City of Grand Rapids et al.*, a CERCLA Sects. 106 and 107 complaint asserting claims against the city, which owned and operated the dump, and a number of generator defendants.

The defendants who consented to do the RI/FS are the

City of Grand Rapids, General Motors Corp., Michigan Waste Systems Inc., Wickes Manufacturing Co. and Organic Chemicals Inc. The defendants consented to reimburse EPA for any oversight costs associated with the study.

► **Court finds Kaufman liable**

The U.S. District Court for the Northern District of California found April 29 that the defendant in *U.S. v. Kaufman* is a former land owner subject to CERCLA Sect. 107 and that Kaufman had tried to conceal that fact.

In pursuing settlement discussions with Kaufman, EPA headquarters has grudgingly consented to Region 9's new \$1 million bottom line. The Justice Dept. won't go with the new bottom line, though, until it gets written authorization from EPA.

► **Successor liability remains open**

A U.S. district court denied a motion for summary judgment in *U.S. v. Allied* by defendant Chemical & Pigment Co. that would have released the company from liability for pollution by predecessor companies — but the court also denied a U.S. cross-motion for summary judgment holding the defendant liable for those acts (*Superfund* 4/13).

The U.S. District Court for the Central District of California also granted a motion for summary judgment by Santa Fe Industries in the case, which concerns recovery of the cost of cleaning up the Nichols Road site in Concord, Calif. Motions for summary judgment by Santa Fe Land Improvement Co. and Santa Fe Southern Pacific Foundation were granted with respect to a part of a site that doesn't require cleanup. But the court denied other motions by Santa Fe entities and other railroads for summary judgment based on an innocent landowner defense.

The defendants dropped motions for summary judgment based on EPA's failure to provide notice under CERCLA Sect. 112 in light of a decision by the 9th U.S. Circuit Court of Appeals in *Idaho v. Howmet*.

► **Carter Day's liability not ripe**

A U.S. District Court dismissed as premature a motion for declaratory judgment by a CERCLA Sect. 107 defendant that the company, Carter Day Industries Inc., is barred by its debtor status from Superfund liability.

Carter Day argued in adversary proceedings against EPA and the New Jersey Dept. of Environmental Protection that the company is safe from any potential liability for Superfund cleanups that arose before Carter Day's Chapter 11 bankruptcy confirmation in December 1983. According to Carter Day, bankruptcy confirmation discharges a corporate debtor from debts that arose before, but not after, confirmation.

The U.S. District Court for the Southern District of New York concurred with EPA that the issue is not ripe for judicial resolution. The court noted that all EPA has done is serve Carter Day, along with some 190 other parties, a notice letter alerting the company to potential responsibility for contamination at two landfill sites in Morris County, N.J., and requesting information. While the agency has funded a remedial investigation and

feasibility study (RI/FS), it has neither selected a remedy nor sought recovery of any response costs from Carter Day or any of the others.

► **Cessation didn't bar injunctive relief**

Just because defendants voluntarily stopped illegal conduct, it doesn't clear them of EPA's CERCLA Sect. 106 case for injunctive relief, held the U.S. District Court for the Northern District of Illinois in *U.S. v. Conservation Chemical Co. of Illinois, et al.*

In denying defendants' motions for dismissal, the court also found EPA has jurisdiction under RCRA 3008(a) to bring an enforcement action in an authorized state.

► **EPA seeks \$8 million-plus from Smith**

EPA has filed a proof of claim against Smith International Inc. in a U.S. bankruptcy court for recovery of more than \$8 million in Superfund response costs.

The agency incurred \$8 million of the costs at the Operating Industries Inc. landfill in Monterey Park, Calif., and \$64,000 at the Chemform Inc. site in Pompano Beach, Fla. EPA asserts Smith International is a generator defendant at the California landfill and is an owner/operator defendant at the Chemform site.

EPA reserved the right to add to the general unsecured claims additional response costs such as further investigations, remedial actions and enforcement costs.

► **EPA seeks access to Pristine Inc. site**

EPA has filed a CERCLA Sect. 104 complaint with the U.S. District Court for the Southern District of Ohio seeking access to the Pristine Inc. Superfund site in Hamilton County, Ohio, to complete a remedial investigation.

EPA contractors sampled 18 ground water monitoring wells at the site from June 1985 to July 1986 and wrote a remedial investigation report. They found a complex aquifer system under the site requiring further investigation.

But in September defendant Pauline Long denied EPA access to the site to finish the study. In November she proposed to allow EPA onsite if it waived the right to recover any further sampling costs. The agency declined and went to court in March 1987 for an order requiring defendants Pauline Long, Oren Long and Jane Long to provide access for the investigation, as well as any other Superfund-related work required.

► **Court asked to re-think RCRA permit**

A local county prosecutor has moved for reconsideration of an order by a district court that allowed Westinghouse Corp. to proceed with interim removal measures in Indiana.

The U.S. District Court for the Southern District of Indiana ruled that a RCRA permit is not required under federal or state law for Westinghouse's interim storage facility in Bloomington, Ind. Since the court's April 22 decision, Westinghouse has begun removing waste to the facility from the Lemon Lane Superfund site and elsewhere (*Superfund* 5/11).

Some local citizens oppose the removal because it sets the stage for incineration of Lemon Lane Superfund wastes, which they oppose.